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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,602

09/29/2003

Carlos Schuler

53268-US-CNT[2]

9993

1095

7590

10/06/2009

NOVARTIS  
CORPORATE INTELLECTUAL PROPERTY  
ONE HEALTH PLAZA 104/3  
EAST HANOVER, NJ 07936-1080

EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,602	<b>Applicant(s)</b> SCHULER ET AL.	
	<b>Examiner</b> NIHIR PATEL	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. The examiner agrees with the applicant's argument and claims 1-20 and 24-33 rejected under 35 U.S.C. § 112, first paragraph are withdrawn.

In reference to claim 21, the applicant argues that Seidler does not disclose a cutting mechanism having both an outer blade and a tubular body with a plurality of blades. The examiner disagrees with the applicant's argument. Tabs 48 of the Seidler 's reference is defined as the outer blade and the body 32 is defined as the tubular body with a plurality of blades 40 and 42 (see col. 4 lines 36-50).

### ***Response to Amendment***

2. The examiner acknowledges the amendment filed on June 17<sup>th</sup>, 2009. The amendment comprises amending claim 21 and cancelling claims 22 and 23.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim **21** is rejected under 35 U.S.C. 102(b) as being anticipated by Seidler (US 5,816,404).

5. **As to claim 21**, Seidler teaches method steps comprising providing a receptacle **10 (see figs. 1 and 2; col. 3 lines 25-30)** having a cover with an exterior surface and an interior surface covering a cavity (**see col. 3 lines 25-45**); providing a cutting mechanism having at least one

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outer blade and a tubular body having a distal end with a plurality of inwardly and outwardly facing blades; piercing the cover with the blades; and rotating the cutting mechanism through the cover to form multiple openings in the cover upon completion of the rotation (**see fig. 4 and col. 4 lines 35-55**).

***Allowable Subject Matter***

5. Claims **1-20 and 24-33** are allowed. The prior art does not teach piercing the cover with the blades by moving the cutting mechanism in a forward direction; and moving the blades in a direction other than the forward direction through the cover to create multiple elongate openings in the cover and thereby provide access into the cavity, with the cut portion being removed onto the exterior surface and away from the cavity as the openings are created.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/  
Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772